

National Credit Union Administration

§ 712.3

712.5 What activities and services are preapproved for CUSOs?

712.6 What activities and services are prohibited for CUSOs?

712.8 What transaction and compensation limits might apply to individuals related to both an FCU and a CUSO?

712.9 When must an FCU comply with this part?

712.10 How can a state supervisory authority obtain an exemption for state chartered credit unions from compliance with § 712.3(d)(3)?

AUTHORITY: 12 U.S.C. 1756, 1757(5)(D) and (7)(I), 1766, 1782, 1784, 1785, and 1786.

SOURCE: 63 FR 10756, Mar. 5, 1998, unless otherwise noted.

§ 712.1 What does this part cover?

This part establishes when a Federal credit union (FCU) can invest in and make loans to CUSOs. CUSOs are subject to review by NCUA. This part does not apply to corporate credit unions that have CUSOs subject to § 704.11 of this title. Sections 712.3(d)(3) and 712.4 of this part apply to state-chartered credit unions and their subsidiaries, as provided in § 741.222 of this chapter.

[63 FR 10756, Mar. 5, 1998, as amended at 73 FR 79311, Dec. 29, 2008]

§ 712.2 How much can an FCU invest in or loan to CUSOs, and what parties may participate?

(a) *Investments.* An FCU's total investments in CUSOs must not exceed, in the aggregate, 1% of its paid-in and unimpaired capital and surplus as of its last calendar year-end financial report.

(b) *Loans.* An FCU's total loans to CUSOs must not exceed, in the aggregate, 1% of its paid-in and unimpaired capital and surplus as of its last calendar year-end financial report. Loan authority is independent and separate from the 1% investment authority of subsection (a) of this section.

(c) *Parties.* An FCU may invest in or loan to a CUSO by itself, with other credit unions, or with non-credit union parties.

(d) *Measurement for calculating regulatory limitation.* For purposes of paragraphs (a) and (b) of this section:

(1) *Paid-in and unimpaired capital and surplus* means shares plus post-closing, undivided earnings (this does not include regular reserves or special reserves required by law, regulation or

special agreement between the credit union and its regulator or share insurer); and

(2) Total investments in and total loans to CUSOs will be measured consistent with GAAP.

(3) *Special rule in the case of less than adequately capitalized FCUs.* This paragraph (d)(3) applies in the case of either an FCU that is currently less than adequately capitalized, as determined under part 702, or where the making of an investment in a CUSO would render the FCU less than adequately capitalized under part 702. Before making an investment in a CUSO, the FCU must obtain prior written approval from the appropriate NCUA regional office if the making of the investment would result in an aggregate cash outlay, measured on a cumulative basis (regardless of how the investment is valued for accounting purposes) in an amount in excess of one percent of the credit union's paid in and unimpaired capital and surplus.

(e) *Divestiture.* If the limitations in paragraph (a) of this section are reached or exceeded because of the profitability of the CUSO and the related GAAP valuation of the investment under the equity method, without an additional cash outlay by the FCU, divestiture is not required. An FCU may continue to invest up to 1% without regard to the increase in the GAAP valuation resulting from a CUSO's profitability.

[63 FR 10756, Mar. 5, 1998, as amended at 64 FR 33187, June 22, 1999; 66 FR 65624, Dec. 20, 2001; 73 FR 79312, Dec. 29, 2008]

§ 712.3 What are the characteristics of and what requirements apply to CUSOs?

(a) *Structure.* An FCU can invest in or loan to a CUSO only if the CUSO is structured as a corporation, limited liability company, or limited partnership. An FCU may only participate in a limited partnership as a limited partner. For purposes of this part, "corporation" means a legally incorporated corporation as established and maintained under relevant federal or state law. For purposes of this part, "limited partnership" means a legally established limited partnership as established and maintained under relevant